FILE COPY

FILED
MAY 12 1958
JAMES R. BROWNING, Clerk

No. 846

In the Supreme Court of the United States

OCTOBER TERM, 1958

D. WOODROW WORTHINGTON, PETITIONER

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR COMMODITY CREDIT CORPORATION IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
GEORGE COCHRAN DOUB,
Assistant Attorney General,
SAMUEL D. SLADE,
LIONEL KESTENBAUM,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement:	
A. The administrative decision	2
B. The proceedings below	7
Argument	10
Conclusion	17
Appendix	18

CITATIONS

Cases:

Friend v. *Lee*, 221 F. 2d 96	16
Helvering v. *Davis*, 301 U.S. 619	16
Ivanhoe Irrigation District v. *McCracken*, 357 U.S. 275	16
Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U.S. 123	11
Mario Mercado e Hijos v. *Benson*, 231 F. 2d 251	17
Panama Canal Co. v. *Grace Line, Inc.*, 356 U.S. 309	16
Perkins v. *Lukens Steel Co.*, 310 U.S. 113	16
Rainwater v. *United States*, 356 U.S. 590	12
Secretary of Agriculture v. *Central Roig Refining Co.*, 338 U.S. 604	11
Stroud v. *Benson*, 254 F. 2d 448, certiorari denied, 358 U.S. 817	12
United States v. *Binghamton Construction Co.*, 347 U.S. 171	16
Wickard v. *Filburn*, 317 U.S. 111	17
Wooldridge Manufacturing Co. v. *United States*, 235 F. 2d 513	16
Work v. *Rives*, 267 U.S. 175	17

Statutes:

	Page
Agricultural Act of 1949, 63 Stat. 1051, as amended, 7 U.S.C. 1421, *et seq.*	2, 15, 18
Section 101, 7 U.S.C. 1441	18
Section 401, 7 U.S.C. 1421	3, 18
Section 405, 7 U.S.C. 1425	3, 19
Section 412, 7 U.S.C. 1429	15, 19
Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 15 U.S.C. 714, *et seq.*	2, 19
Section 4(c), 15 U.S.C. 714b(c)	19
Section 4(g), 15 U.S.C. 714b(g)	16, 20
Section 4(j), 15 U.S.C. 714b(j)	16, 20
Section 4(l), 15 U.S.C. 714b(l)	16, 20
Section 4(m), 15 U.S.C. 714b(m)	16, 20
Section 5, 15 U.S.C. 714c	8, 16, 20
Section 11, 15 U.S.C. 714i	4
Section 12, 15 U.S.C. 714j	3, 16, 21

Miscellaneous:

	Page
Hearings before the Subcommittee on Agriculture of the House Committee on Appropriations 82nd Cong., 2d Sess., pp. 172-74, 391-92	12
Hearings pursuant to S. Res. 256 before the Senate Committee on Agriculture and Forestry, 82nd Cong., 2nd Sess., Pt. II, pp. 1689, 1926, 1962, 1964, 1989	12
S. Rept. No. 2048, 82nd Cong., 2d Sess., pp. 10, 16	12
Tobacco Loan Program of 1958:	
Section 464.1001, 23 F.R. 5645	3
Section 464.1002, 23 F.R. 5645	3
Section 464.1002(c), 23 F.R. 5645	12
Section 464.1003, 23 F.R. 5645	3

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 846

D. WOODROW WORTHINGTON, PETITIONER

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR COMMODITY CREDIT CORPORATION IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the District Court (Resp. App. 125-140) is reported at 157 F. Supp. 497. The opinion of the Court of Appeals (Pet. App. 21-29) is reported at 263 F. 2d 178.

JURISDICTION

The judgment of the Court of Appeals was entered on January 21, 1959. The petition for a writ of certiorari was filed on April 16, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, on this record, the Court of Appeals properly held that Commodity Credit Corporation did not act arbitrarily when it refused to authorize petitioner, a tobacco auction warehouseman, or his lessees to extend federal price supports to tobacco producers, on the ground that petitioner could not be trusted to comply with the program or to permit his lessees to operate independently.

2. Whether a justiciable question is presented by the Commodity Credit Corporation's refusal to approve contracts which would authorize petitioner, or his lessees, to act for the federal price support program and extend support benefits to tobacco producers.

STATUTES INVOLVED

The pertinent provisions of the Agricultural Act of 1949, 63 Stat. 1051, as amended, 7 U.S.C. 1421 *et seq.*, and of the Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 15 U.S.C. 714, *et seq.*, are set forth in the Appendix, *infra*, pp. 18-21.

STATEMENT

A. *The administrative decision.* In this action, petitioner challenges a decision by the Commodity Credit Corporation (Commodity) not to extend price supports through any tobacco auction warehouse which petitioner owns, operates, or in which he in any way has any interest (Resp. App. 89).[1]

Unless barred, private warehousemen participate

[1] "Resp. App." designates Commodity's appendix in the Court of Appeals, which constitutes the record filed in this Court. "Pet. App." refers to the appendix to the petition for writ of certiorari.

in the tobacco price support program by entering into contracts which authorize them to offer price support to producers whose tobacco is not bid upon above the support level for the particular grade (Resp App. 33, 92-93, 115-116). Sections 464.1002, 464.1003 of the 1958 Tobacco Loan Program, 23 F.R. 5645. The warehousemen are reimbursed by the tobacco cooperative associations to which they deliver the tobacco accepted for price supports (Resp. App. 93, 116-117); the associations, in turn, receive the necessary funds from Commodity in the form of nonrecourse loans.[2]

The warehousemen's contracts with the associations are subject to the approval of Commodity (Resp. App. 33-35) and establish the warehousemen's duties under the program—*e.g.*, to keep accurate records; to make the correct payment per grade according to a specified schedule; to advance price supports only upon tobacco under within-quota marketing cards, which is sound and merchantable and has been graded by federal inspectors; and to take every reasonable precaution against acceptance of unsound, damaged tobacco, "resale" tobacco (which had been previously sold at auction), or tobacco which has been "nested", *i.e.*, ar-

---

[2] Section 405 of the Agricultural Act of 1949, 7 U.S.C. 1425; Section 464.1001 of 1958 Tobacco Loan Program, 23 F.R. at 5645. As part of the tobacco price support program Commodity Credit Corporation enters into contracts with the Flue-Cured Tobacco Cooperative Stabilization Corporation and the burley associations, providing for these loans (Resp. App. 17, 33-34). Section 401(a) of Agricultural Act of 1949, 7 U.S.C. 1421(a); Section 12 of Commodity Credit Corporation Charter Act, 15 U.S.C. 714j; Section 464.1001 of 1958 Tobacco Loan Program, 23 F.R. 5645. The associations enter into contracts with the auction warehousemen, as described in the text, and are the actual purchasers of tobacco accepted for price supports.

ranged to conceal foreign matter or inferior grade, quality, or condition (Resp. App. 92-100, 115-22). The contracts provide for suspension or termination upon the warehouseman's failure to comply with these provisions (Resp. App. 98, 119-21).

The first reports of petitioner's irregularities reached the Department of Agriculture at the end of the 1947 marketing season; an investigation disclosed misuse of tobacco inspection certificates, with changes of entries and substitution of tobacco (Resp. App. 52). Worthington then owned and operated ten warehouses —eight in the Kentucky burley market and two in the North Carolina flue-cured market (Resp. App. 16-17). At the trial, the former director of the Tobacco Division of the Department's Commodity Stabilization Service [3] testified to a series of violations from 1947 to 1954, which he listed in three categories: (1) tobacco inspection—nine cases; (2) price support—ten cases; (3) marketing quotas—ten cases (Resp. App. 57). Of these, two criminal prosecutions resulted in conviction of Worthington upon thirty-one counts of altering inspection certificates and of nesting tobacco so that inspection did not reveal concealed inferior tobacco (Resp. App. 122-23); and upon fourteen counts of falsely altering inspection certificates and falsely representing that tobacco had been inspected and weighed by federal inspectors (Resp. App. 124-25). Other

[3] The Commodity Credit Corporation is authorized to utilize the officers, employees, services, facilities and information of any federal agency, including offices of the Department of Agriculture. Section 11 of Commodity Credit Corporation Charter Act, 15 U.S.C. 714i. Commodity's operations are carried out by the Department's Commodity Stabilization Service, and the communications to Worthington were from that Service.

criminal and civil changes are pending (Resp. App. 39, 72, 76-78, 91).[4]

Officials of the Department of Agriculture responsible for Commodity's program made numerous efforts to bring these irregularities to Worthington's attention and obtain his voluntary compliance, in the course of discussions, conferences and correspondence with him and his attorney (Resp. App. 30-32, 41, 53-54, 58, 62, 71). The 1952 contract between the Flue-Cured Association and Worthington contained special conditions dealing with such violations and Worthington's promise to comply with the law and the regulations (Resp. App. 58). In 1953, another contract was approved but Worthington was admonished to obey the marketing quota, inspection, and price support rules, and to discontinue certain specific irregularities (Resp. App. 54, 80-82).[5]

---

[4] The record below also specifically shows an instance in 1952 when ineligible tobacco was accepted for price supports at one of Worthington's warehouses (Resp. App. 109) and, in 1953, when tobacco delivered by him was found to be much lower in grade than indicated on the inspection tickets, implying substitution and fraudulent claim for a high price support (Resp. App. 47-49, 84). Similarly, buying companies had withdrawn from Worthington's warehouses, or threatened to do so, when tobacco delivered to them was discovered to be inferior to the grade purchased on the floor (Resp. App. 44, 45, 46). Petitioner's reputation among buyers for honesty and integrity was bad (Resp. App. 43, 46) and during one season, buyers returned to one Worthington warehouse 131,860 pounds of tobacco which was found nested (Resp. App. 57).

[5] The prior irregularities were listed as follows (Resp. App. 80-81):

1. Unidentified leaf account resales in excess of purchases.
2. Failure to obtain Bill of Nonwarehouse Sale to identify nonwarehouse purchases of tobacco directly from farmers.
3. False identification of leaf account resale tobacco on marketing cards of farmers.
4. Failure to keep required records.

[footnote 5 continued]

When Worthington's infractions continued, the responsible officials concluded that there was "no recourse" other than to exclude him from the price support program (Resp. App. 35-36, 37, 58-59, 62-63, 71, 73). First, however, an attempt was made to permit his continued ownership of warehouses in the program, but to insulate him from their operation (Resp. App. 61, 40-41). In April 1954, Worthington was informed that price support would not be made available through any warehouse which he operated or in which he had "a substantial interest," and that his interest would not be considered substantial if he leased it for a fixed cash rental to persons unrelated to him, and did not participate in the warehouse operation or in its profits (Resp. App. 21, 82-84).

As a result, Worthington leased his ten auction warehouses to others who operated them during the 1954-55 season (Resp. App. 21-22). The Department's investigations revealed, however, that in violation of the

---

5. Filing of incomplete and incorrect reports.

6. Adding tobacco to baskets after the baskets had been graded and sold at auction to various buyers and altering the basket tickets to show the increased weights, thereby representing the additional tobacco as having been inspected under the Tobacco Inspection Act.

7. Forgery or alteration of the tobacco inspection portion of basket tickets.

8. Nesting of tobacco, primarily warehouse leaf account tobacco.

9. Switching basket tickets or substituting tobacco of inferior quality.

10. Consigning ineligible resale tobacco for loans under the price support program.

11. Consigning ineligible excess tobacco for loans under the price support program.

12. "Creaming" behind the sale and taking tobacco for the leaf account which should have been consigned for loans under the price support program.

conditions Worthington had leased one warehouse for a percentage of the profits of others; and nearly all loans were not genuine leases to independent third parties (Resp. App. 38-39, 41, 68-70, 89).

The officials responsible for Commodity's programs became convinced that, as long as Worthington owned a warehouse, he would participate in its operation (Resp. App. 70). Accordingly, in view of the 1954 experience with the leases and the accumulated record of violations, they determined that, until further notice, price support would not be made available through any auction warehouse which Worthington owns, operates, or in which he in any way has any interest. This decision was communicated to Worthington and to all his lessees by letters of July 6, 1955 (Resp. App. 88-89, 85-86, 26).[6] Worthington thereafter sold his ten tobacco houses, allegedly for considerably less than their true worth (Resp. App. 27).

B. *The proceedings below.* On June 5, 1957, Worthington brought this action, alleging that he had obtained an option to purchase a tobacco warehouse in Clarkton,

---

[6] One exception was made from this decision. Upon representations that, before July 6, 1955, G. B. Jones, one of Worthington's lessees, had already entered into a bona fide lease for the coming season, permission was granted for a contract between Mr. Jones and the Flue-Cured Tobacco Cooperative Stabilization Corporation, covering a warehouse of petitioner's in Greenville, North Carolina (Resp. App. 84-85, 86-87, 38). Mr. Worthington and Mr. Jones were advised, however, that this modification of the July 6, 1955 ruling was "only with respect to this one warehouse, and applies to the 1955 crop marketing season only" and that the exclusion "otherwise remains in effect" (Resp. App. 85, 87).

Commodity later rejected requests to renew the arrangement with Mr. Jones for the 1956 season (Resp. App. 90-92, 87-88, 14-15) and no further exception has been made from the ruling of July 6, 1955.

Bladen County, North Carolina, and that the warehouse could not be profitably operated without participation in the price support program (Resp. App. 1-2). He prayed for a declaratory judgment that: (a) Commodity may not, in administering the tobacco price support program, enter into and carry out contracts with such warehouses as it deems proper in the absolute discretion of its officers, directors, agents and employees; (b) Commodity must make the tobacco price support program available to all tobacco warehouses, including petitioner's, without discrimination between him and other owners; (c) Commodity's refusal to grant petitioner the privileges of the tobacco price support program is a judicial act depriving him of property without due process of law; and (d) for other necessary and proper relief (Resp. App. 5).

In its answer, Commodity denied that its action was an arbitrary or unreasonable abuse of discretion or that it deprived petitioner of any property right (Resp. App. 12). It also urged, *inter alia*, that its action was an exercise of administrative discretion not subject to judicial review and presenting no justiciable controversy (Resp. App. 13).

In his memorandum of October 9, 1957 (Resp. App. 125-140), District Judge Gilliam denied Commodity's claims of lack of jurisdiction (Resp. App. 127-128, 128-129, 131, 132-138). On the merits, the court held that Commodity was not obliged to utilize all tobacco auction warehousemen without exception but only "to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business * * *." Section 5 of the Commodity Credit Corporation Char-

ter Act, 15 U.S.C. 714c. Resp. App. 129-130. Finding that Worthington's past conduct and reputation indicated "a lack of integrity as a tobacco warehouseman" (Resp. App. 131), the District Court ruled that Commodity had properly excluded any warehouse operation controlled or managed by Worthington (Resp. App. 132, 138).

However, the District Court set aside the administrative decision to exclude warehouses operated by wholly independent lessees of Worthington. This was held to constitute an arbitrary discrimination and a deprivation, without due process, of Worthington's right to lease his property for use in the tobacco business. The court emphasized that Worthington's position "must be that of pure landlord, having no interest direct or indirect in the actual operation of the business, and any reasonable doubt as to this might justify a refusal or withdrawal of price supports to a business carried on in the plaintiff's warehouse" (Resp. App. 139). To that extent, Commodity's decision was invalidated (Resp. App. 140-141).

On appeal, the Fourth Circuit reversed (Pet. App. 21-30), on the ground that Commodity's action "cannot be said to be unfounded, malicious or arbitrary" (Pet. App. 28). Pointing out that the entire tobacco price support program depends, in large measure, upon the warehousemen's diligence and integrity (Pet. App. 23), the court held that Worthington's "gross and willful misconduct" demonstrated that he would neither refrain from fraudulent conduct nor permit his lessees to operate independently and honestly; "he could not be trusted to separate himself from the business conducted on his premises and from its temptations" (Pet. App. 27-28). Commodity could justifiably

have excluded Worthington even earlier than 1955, and the district court erred in giving him "another chance", since on this record Commodity would be required to monitor continuously any warehouse in which Worthington had an interest, "or to face the risk, amounting to probability, of the misuse of public funds" (Pet. App. 28). Commodity could not be restricted to these alternatives and it was up to the agency whether to modify its ruling in the future.

The Fourth Circuit did not pass upon Commodity's argument that no justiciable controversy was presented by a refusal to deal with Worthington on the theory that contracts in the price support field had been lawfully committed to administrative discretion. "In a case as plain as this", the court found it unnecessary to determine whether, when abuse is shown, judicial review would be available (Pet. App. 28-29).

ARGUMENT

Petitioner misstates the decision below to be a holding that Commodity Credit Corporation has "unbridled discretion" to deny price support contracts to auction warehouses in which a person convicted of violations of the tobacco regulatory laws has any interest (Pet. 7). No such broad principle was expounded by the Court of Appeals, which explicitly refused to pass upon the reviewability of an abuse of discretion (Pet. App. 28-29). The court was "simply deciding on the record before us that Commodity's action is not shown to have been improper" (Pet. App. 28): "In light of [Worthington's] record of repeated gross and willful misconduct * * * refusal to administer the program through him cannot be said to be unfounded, malicious or arbitrary" (Pet. App. 28).

The record abundantly supports this careful evaluation of the particular agency ruling here involved. Furthermore, the absence of any justiciable controversy presents a second obstacle to review.

1. Assuming that Commodity's decision is reviewable, judicial intervention would be warranted only if Commodity had been "capricious, [acted] without reason, that is, in relation to the attainment of the objects declared by" Congress in the price support program. *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604, 613-614; see *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 153-154 (Frankfurter, J. concurring). It is clear, however, that Commodity's exclusion of untrustworthy warehousemen is reasonably related to, and is required by, the needs of the price support program.

Auction warehousemen, when authorized by contract to offer price supports to tobacco farmers, are charged with the duty of enforcing the conditions of eligibility to price support. See pp. 3-4, *supra*. As the court below held, the warehouse operator "actually administers the extension of price supports, and the success of the entire program depends, in large measure, upon his diligence and integrity" (Pet. App. 23). The program would be placed in jeopardy if warehousemen were improperly to make payments for ineligible tobacco (*e.g.*, in excess of a farmer's quota), or were improperly to pay too much (*e.g.*, high-grade prices for low-grade tobacco). Illegal payments would require unanticipated additional outlays during the marketing season. Further losses would be sustained upon the later resale of tobacco accepted and paid for under an incorrect grade. Ultimately, such support

funds and reimbursements "come only from moneys supplied by the United States." *Stroud* v. *Benson*, 254 F. 2d 448, 453 (C.A. 4), certiorari denied, 358 U.S. 817; *Rainwater* v. *United States*, 356 U.S. 590, 591; Resp. App. 63. In addition, fraudulent warehouse operations would disrupt the orderly and responsible marketing of tobacco, which is essential to the integrity of the program and to stable market conditions. Pet. App. 24; see *Stroud* v. *Benson*, 254 F. 2d at 453.

For these reasons, Commodity has prescribed contract provisions providing suspension and cancellation for violations (Resp. App. 98, 119-121). Since 1952, it has also applied policy provisions governing eligibility for contracts which require that warehousemen shall have satisfactorily complied with previous contracts, and which prohibit approval of a warehouseman if there is substantial evidence of fraudulent or dishonest acts by him (Resp. App. 113-14), or if a prosecution involving fraudulent or dishonest acts is pending before any local, state or federal authority (Resp. App. 108).[7] See Section 464.1002(c)(1)(iii) of 1958 Tobacco Loan Program, 23 F.R. 5645. Despite petitioner's contrary

---

[7] Docket CZ-193, Exhibit D-6 below, adopting the above policy, was originally promulgated with respect to storage agreements, after vigorous Congressional criticism of Commodity for continuing to do business with warehousemen who had been guilty of misconduct and violations. *E.g.*, S. Rept. No. 2048, 82nd Cong., 2d Sess., pp. 10, 16; Hearings pursuant to S. Res. 256 before the Senate Committee on Agriculture and Forestry, 82nd Cong., 2nd Sess., Pt. II, pp. 1689, 1926, 1962, 1964, 1989; Hearings before the Subcommittee on Agriculture of the House Committee on Appropriations, 82nd Cong., 2d Sess. pp. 172-74, 391-92. The same principles were applied to the price support contracts with tobacco warehousemen upon Commodity's recognition that "effective administration" of the program depends "on the honesty and integrity of the tobacco auction warehouseman and his employees" (Resp. App. 108-09).

assertion (Pet. 15). the authority to suspend and cancel contracts must necessarily be supplemented by the power to refuse contracts since, as this record demonstrates, violations and fraudulent activity are often not disclosed until the auction season has been completed.

2. In the Statement, *supra*, pp. 4-7, we have set forth petitioner's acts of misconduct—violations of contract and regulations—which were disclosed by Commodity's investigations, and which continued despite repeated warnings and admonitions. Rather than protect the program against possible frauds by others, as was his duty, Worthington flouted it. Accordingly, as both courts below agreed, Commodity was justified in refusing to authorize him to participate actively in the extension of price supports; respondent's officials would have been derelict in their duty, and wasteful of public funds, had they failed to do so. And Worthington's performance after the initial 1954 decision demonstrated that Commodity had no choice but also to exclude auction operations conducted in his warehouses by ostensibly independent lessees.

The Fourth Circuit correctly relied upon the "frustrating experience" in the 1954 season (Pet. App. 28). Commodity then agreed to approve price support contracts with wholly independent lessees of Worthington, and upon express representations that his interest was limited to a fixed cash rental, without participation in the profits or management (Resp. App. 21-22, 40-41, 61, 82, 100). When investigation revealed violation of these conditions (Resp. App. 38-39, 41, 68-70, 89, 103-105), the agency was justified in concluding, in Chief Judge Sobeloff's words, that Worthington "could not

be trusted to separate himself from the business conducted on his premises and from its temptations" (Pet. App. 27; Resp. App. 70). The 1955 decision, here challenged, then followed.

When the trial court held that Commodity must deal with independent lessees of Worthington, it ignored this 1954 experience, as well as its own finding that petitioner had actively participated in his lessees' auction businesses despite his promise (Resp. App. 126; Pet. App. 27). Indeed, as the Fourth Circuit observed, the district judge "acknowledged the hazard involved" in dealing with Worthington's lessees by stating that "any reasonable doubt" of the lessees' independence "might justify a refusal or withdrawal of price supports * * *" (Resp. App. 139; Pet. App. 27). The "reasonable doubt" had already been established in the 1954 season, and consequently the agency's action for 1955 was well warranted.

3. The other issues tendered in the petition are entirely without basis. While petitioner offers himself as a champion of the tobacco farmers' interest in having price supports extended through local houses (Pet. 10), the exclusion of petitioner has not hindered the availability of supports in hundreds of warehouses throughout the producing areas.[8] The participation of warehousemen lacking integrity, like petitioner, would be to the farmers' detriment, not their advantage (Resp. App. 131-132; Pet. App. 24). Second, petitioner insinuates that he has had no hearing (Pet. 11, 13, 18); but the record demonstrates the many opportunities to state

---

[8] We are advised that, in the 1958 season, 460 tobacco auction warehouses operated in the flue-cured tobacco areas and 366 operated in the burley tobacco areas.

his case administratively (see pp. 4-6, *supra*), and the District Court offered him a full trial on all relevant issues.[9] Third, the contention that a permanent bar exists against petitioner (Pet. 5, 16-17) ignores the Fourth Circuit's ruling that he could apply to the agency for relief in the light of present or future circumstances. Petitioner has not made any such application[10] and no claim for judicial aid should now be entertained.

4. If certiorari is granted, respondent will urge, as it did below, that no justiciable controversy was presented by Commodity's ruling in this case, and that approval of price support contracts with warehousemen has been exclusively committed by Congress to administrative discretion. We believe that this conclusion is compelled by the provisions of the Agricultural Act of 1949, which establish the Secretary's broad control over tobacco price supports and provide that "Determinations made by the Secretary under this Act shall be final and conclusive * * *." Section 412, 7 U.S.C. 1429. The Commodity Credit Corporation Charter Act

[9] Worthington's approach has been the repeated claims of innocence and lack of awareness of the laws and regulations (Resp. App. 54-55, 58, 63) and the bland denial that any reason had been given him for the agency's decision (Resp. App. 19, 26, 28, 31, 33), despite his admission that he had read Commodity's letters to him (Resp. App. 30-31) and had participated in the discussions reported by Commodity's officials (Resp. App. 32), see pp. 4-6, *supra*.

[10] We are advised that, in advance of the 1958 season, after the District Court decision in this case, petitioner's attorney discussed with Commodity officials the possibility of contracts with lessees of Worthington. By letter of April 2, 1958, the Director of the Tobacco Division requested a specific proposal which would show the extent of petitioner's interest in the operation of the warehouses. No response was received and no further application has been made by petitioner.

likewise invests a complementary discretion in Commodity to administer the details of the program and, while certain guiding principles are set forth, no "litigable rights" were created. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 127.[11] This legislative purpose should be given full play, since it carries out the traditional freedom from judicial control of the power to enter into, or deny, government contracts (*Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 125-28, 130; *United States* v. *Binghamton Construction Co.*, 347 U.S. 171, 176; *Wooldridge Manufacturing Co.* v. *United States*, 235 F. 2d 513 (C.A.D.C.); *Friend* v. *Lee*, 221 F. 2d 96, 100 (C.A.D.C.)), as well as the power to set conditions upon the disposition of federal funds and property and the distribution of benefits (*Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275; *Helvering* v. *Davis*,

---

[11] Commodity is authorized to "enter into and carry out such contracts or agreements as are necessary in the conduct of its business" (Section 4(g) of the Charter Act, 15 U.S.C. 714b(g)). It is also authorized to "make such loans and advances of its funds as are necessary in the conduct of its business" (Section 4(l)), to "determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed and paid" (Section 4(j)), and to exercise such incidental powers as are necessary and are customary in corporations (Section 4(m)), and it may, by contract, utilize producer associations (Section 12). It is also to use the "usual and customary" trade channels, *e.g.*, tobacco warehousemen, rather than directly deal with farmers, "to the maximum extent practicable consistent with the fulfillment of [its] purposes and the effective and efficient conduct of its business" (Section 5).

The discretion, under these provisions, to select trustworthy warehousemen was not subjected to judicial review by the "sue and be sued" clause (Section 4(c)), since this determination is "not * * * appropriate for judicial action," being one of the "questions of judgment requiring close analysis and nice choices" entrusted to the agency. *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309, 317, 318.

301 U.S. 619, 640-41, 645; *Wickard* v. *Filburn*, 317 U.S. 111, 131; cf., *Work* v. *Rives*, 267 U.S. 175, 181-82; *Mario Mercado e Hijos* v. *Benson*, 231 F. 2d 251 (C.A.D.C.)).

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

SAMUEL D. SLADE,
LIONEL KESTENBAUM,
Attorneys.

MAY, 1959.

APPENDIX

Statutes Involved

1. The pertinent provisions of the Agricultural Act of 1949, 63 Stat. 1051, as amended, 7 U.S.C. 1421, *et seq.*, are as follows:

Section 101 (7 U.S.C. 1441).

The Secretary of Agriculture (hereinafter called the "Secretary") is authorized and directed to make available through loans, purchases, or other operations, price support to cooperators for any crop of any basic agricultural commodity, if producers have not disapproved marketing quotas for such crop, at a level not in excess of 90 per centum of the parity price of the commodity nor less than the level provided in subsections (a), (b), and (c) as follows:

* * * * * *

(c) For tobacco, if marketing quotas are in effect, the level of support shall be 90 per centum of the parity price.

* * * * * *

Section 401 (7 U.S.C. 1421).

(a) The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.

(b) Except as otherwise provided in this Act, the amounts, terms, and conditions of price support operations and the extent to which such operations are carried out, shall be determined or approved by the Secretary. * * *

* * * * * *

Section 405 (7 U.S.C. 1425).

No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program.

Section 412 (7 U.S.C. 1429).

Determinations made by the Secretary under this Act shall be final and conclusive: *Provided*, That the scope and nature of such determinations shall not be inconsistent with the provisions of the Commodity Credit Corporation Charter Act.

2. The pertinent provisions of the Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 15 U.S.C. 714, *et seq.*, are as follows:

Section 4 (15 U.S.C. 714b).

General Powers.—The Corporation—

* * * * * *

(c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. * * *

* * * * * *

(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business. * * *

* * * * *

(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.

* * * * *

(l) May make such loans and advances of its funds as are necessary in the conduct of its business.

(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally * * *.

Section 5 (15 U.S.C. 714c).

Specific Powers.—In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act (31 U.S.C., 1940 edition, Supp. V, 841), the Corporation is authorized to use its general powers only to—

(a) Support the prices of agricultural commodities through loans, purchases, payments, and other operations.

* * * * *

(g) Carry out such other operations as the Congress may specifically authorize or provide for.

In the Corporation's purchasing and selling operations with respect to agricultural commodi-

ties (except sales to other Government agencies), and in the warehousing, transporting, processing, or handling of agricultural commodities, the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce.

Section 12 (15 U.S.C. 714j).

Utilization of Associations and Trade Facilities.—The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 904090 1424